

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

ANDREW NAULT and JODY NAULT,
husband and wife, and the marital
community composed thereof,

Plaintiffs,

VS.

THE UNITED STATES OF AMERICA,

Defendant.

CASE NO. 1:21-CV-3050-TOR

**STIPULATED MOTION FOR
PROTECTIVE ORDER**

1. MOTION, PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and move the Court to enter the following Stipulated Protective Order. This agreement does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The agreement does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible
3 things produced or otherwise exchanged: military records, military personnel files,
4 and other records containing Privacy Act, 5 U.S.C. § 522a, protected information of
5 non-parties. Nothing contained in this Protective Order shall be construed to restrict
6 the use or disclosure of documents or tangible things already in a parties’ possession
7 or control, or to documents or other tangible things obtained through means other than
8 formal discovery exchanges or subpoena.

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential
11 material (as defined above), but also (1) any information copied or extracted from
12 confidential material; (2) all copies, excerpts, summaries, or compilations of
13 confidential material; and (3) any testimony, conversations, or presentations by parties
14 or their counsel that might reveal confidential material.

15 However, the protections conferred by this agreement do not cover information
16 that is in the public domain or becomes part of the public domain through trial or
17 otherwise.

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1 Basic Principles. A receiving party may use confidential material that is
20 disclosed or produced by another party or by a non-party in connection with this case
21 only for prosecuting, defending, or attempting to settle this litigation. Confidential
22 material may be disclosed only to the categories of persons and under the conditions
23 described in this agreement. Confidential material must be stored and maintained by a
24 receiving party at a location and in a secure manner that ensures that access is limited
25 to the persons authorized under this agreement.

26 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
27 ordered by the court or permitted in writing by the designating party, a receiving party
28 may disclose any confidential material only to:

1 (a) the receiving party's counsel of record in this action, as well as employees
2 of counsel to whom it is reasonably necessary to disclose the information for this
3 litigation;

4 (b) the officers, directors, employees (including agency counsel), and former
5 employees of the receiving party to whom disclosure is reasonably necessary for this
6 litigation, unless the parties agree that a particular document or material produced is
7 for Attorney's Eyes Only and is so designated;

8 (c) experts and consultants to whom disclosure is reasonably necessary for this
9 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
10 (Exhibit A);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) copy or imaging services retained by counsel to assist in the duplication of
13 confidential material, provided that counsel for the party retaining the copy or imaging
14 service instructs the service not to disclose any confidential material to third parties
15 and to immediately return all originals and copies of any confidential material;

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the "Acknowledgment and Agreement to
18 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered
19 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
20 reveal confidential material must be separately bound by the court reporter and may
21 not be disclosed to anyone except as permitted under this agreement;

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

24 4.3 Filing Confidential Material. Before filing confidential material or
25 discussing or referencing such material in court filings, the filing party shall confer
26 with the designating party to determine whether the designating party will remove the
27 confidential designation, whether the document can be redacted, or whether a motion
28 to seal or stipulation and proposed order is warranted. During the meet and confer

1 process, the designating party must identify the basis for sealing the specific
2 confidential information at issue, and the filing party shall include this basis in its
3 motion to seal, along with any objection to sealing the information at issue. A party
4 who seeks to maintain the confidentiality of its information bears the burden of
5 proving that the information should be filed under seal, even if it is not the party filing
6 the motion to seal. A party's failure to meet this burden will result in the motion to
7 seal being denied, in accordance with the strong presumption of public access to the
8 Court's files.

9 5. **DESIGNATING PROTECTED MATERIAL**

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
11 party or non-party that designates information or items for protection under this
12 agreement must take care to limit any such designation to specific material that
13 qualifies under the appropriate standards. The designating party must designate for
14 protection only those parts of material, documents, items, or oral or written
15 communications that qualify, so that other portions of the material, documents, items,
16 or communications for which protection is not warranted are not swept unjustifiably
17 within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations
19 that are shown to be clearly unjustified or that have been made for an improper
20 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to
21 impose unnecessary expenses and burdens on other parties) expose the designating
22 party to sanctions.

23 If it comes to a designating party's attention that information or items that it
24 designated for protection do not qualify for protection, the designating party must
25 promptly notify all other parties that it is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this
27 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
28 stipulated or ordered, disclosure or discovery material that qualifies for protection

1 under this agreement must be clearly so designated before or when the material is
2 disclosed or produced.

3 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), the designating party must affix the word “CONFIDENTIAL” to each
6 page that contains confidential material. If only a portion or portions of the material
7 on a page qualifies for protection, the producing party also must clearly identify the
8 protected portion(s) (*e.g.*, by making appropriate markings in the margins).

9 (b) Testimony given in deposition or in other pretrial proceedings: the parties
10 and any participating non-parties must identify on the record, during the deposition or
11 other pretrial proceeding, all protected testimony, without prejudice to their right to so
12 designate other testimony after reviewing the transcript. Any party or non-party may,
13 within fifteen days after receiving the transcript of the deposition or other pretrial
14 proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If
15 a party or non-party desires to protect confidential information at trial, the issue
16 should be addressed during the pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a prominent place on
18 the exterior of the container or containers in which the information or item is stored
19 the word “CONFIDENTIAL.” If only a portion or portions of the information or item
20 warrant protection, the producing party, to the extent practicable, shall identify the
21 protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
23 to designate qualified information or items does not, standing alone, waive the
24 designating party’s right to secure protection under this agreement for such material.
25 Upon timely correction of a designation, the receiving party must make reasonable
26 efforts to ensure that the material is treated in accordance with the provisions of this
27 agreement.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any party or non-party may challenge a designation
3 of confidentiality at any time. Unless a prompt challenge to a designating party's
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
5 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
6 party does not waive its right to challenge a confidentiality designation by electing not
7 to mount a challenge promptly after the original designation is disclosed.

8 6.2 Meet and Confer. The parties must make every attempt to resolve any
9 dispute regarding confidential designations without court involvement. Any motion
10 regarding confidential designations or for a protective order must include a
11 certification, in the motion or in a declaration or affidavit, that the movant has
12 engaged in a good faith meet and confer conference with other affected parties in an
13 effort to resolve the dispute without court action. The certification must list the date,
14 manner, and participants to the conference. A good faith effort to confer requires a
15 face-to-face meeting or a telephone conference.

16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
17 intervention, the designating party may request a ruling by the Court in accordance
18 with the Court's policies and procedures governing resolution of discovery disputes.
19 The burden of persuasion shall be on the designating party. Frivolous challenges, and
20 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses
21 and burdens on other parties) may expose the challenging party to sanctions. All
22 parties shall continue to maintain the material in question as confidential until the
23 court rules on the challenge.

24 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
25 IN OTHER LITIGATION

26 If a party is served with a subpoena or a court order issued in other litigation
27 that compels disclosure of any information or items designated in this action as
28 "CONFIDENTIAL," that party must:

1 (a) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or
5 order is subject to this agreement. Such notification shall include a copy of this
6 agreement; and (c) cooperate with respect to all reasonable procedures sought to be
7 pursued by the designating party whose confidential material may be affected.

8 8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
10 confidential material to any person or in any circumstance not authorized under this
11 agreement, the receiving party must immediately (a) notify in writing the designating
12 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
13 unauthorized copies of the protected material, (c) inform the person or persons to
14 whom unauthorized disclosures were made of all the terms of this agreement, and (d)
15 request that such person or persons execute the “Acknowledgment and Agreement to
16 Be Bound” that is attached hereto as Exhibit A.

17 9. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
18 **PROTECTED MATERIAL**

19 When a producing party gives notice to receiving parties that certain
20 inadvertently produced material is subject to a claim of privilege or other protection,
21 the obligations of the receiving parties are those set forth in Federal Rule of Civil
22 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
23 may be established in an e-discovery order or agreement that provides for production
24 without prior privilege review.

25 10. **NON TERMINATION AND RETURN OF DOCUMENTS**

26 Within 60 days after the termination of this action, including all appeals, each
27 receiving party must return all confidential material to the producing party, including
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1 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
2 appropriate methods of destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy
4 of all documents filed with the court, trial, deposition, and hearing transcripts,
5 correspondence, deposition and trial exhibits, expert reports, attorney work product,
6 and consultant and expert work product, even if such materials contain confidential
7 material.

8 The confidentiality obligations imposed by this agreement shall remain in effect
9 until a designating party agrees otherwise in writing or a court orders otherwise.

10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11 DATED December 3, 2021.
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13 A handwritten signature in blue ink that reads "Thomas O. Rice".
14 THOMAS O. RICE
15 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of Washington on _____ [date] in the case of Andrew Nault and Jody Nault v. The United States of America, Cause No. 1:21-cv-03050-TOR. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: